



SENATE BILL 622: Disaster Relief Revisions.

2019-2020 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 14, 2019
Introduced by:	Sens. Tillman, Hise, Newton	Prepared by:	Cindy Avrette
Analysis of:	Amendment to First Edition S622-ARBf-17		Staff Attorney

OVERVIEW: Amendment S622-ARBf-17¹ revises the language in Part VI of the bill, as requested by the State agencies. The amendment does not change the policy.

Part VI would provide tax and regulatory relief to out-of-state businesses that come into the State immediately after a disaster to help with critical infrastructure repair. The Part would do two things:

- Exclude a nonresident business and nonresident employees from income and franchise tax, business registration, and NC's unemployment and workers' compensation requirements.*
- Allow the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration.*

AMENDMENT: The amendment defines the extent of the relief granted by this Part; uses terms that are defined in the tax statutes; provides notification to the Department of Revenue so that it can effectively administer the relief; and clarifies the process that must be followed to receive the relief.

CURRENT LAW: During times of natural disasters, property and equipment owned or used by utility or communications transmission services are severely damaged and customers are often left without vital services, and often without ample supply of motor fuel. The companies that provide these services often request other similarly situated companies, subsidiaries, and affiliates from out-of-state to come into the State to assist the companies in restoring these services. Whenever these companies come into the State, they are doing business in the State and become subject to various regulatory and tax laws.

BILL ANALYSIS of BILL AS AMENDED: Part VI of the bill would do two things:

- It would provide that nonresident businesses and nonresident employees that are requested to come into the State at the request of a *critical infrastructure company* are not doing business in this State for the disaster-related work performed during the disaster response period, and are therefore exempt from the following State laws (**Sections 6.1 through 6.9**):
 - Registration with the Secretary of State.
 - Corporate income and franchise tax.
 - Individual income tax.
 - Workers compensation laws.

¹ This amendment differs slightly from the one emailed yesterday. It revises the reporting requirements, as agreed upon by the interested parties and the Department of Revenue.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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- Unemployment insurance taxes.

At least 29 states have enacted similar disaster recovery legislation. Those states include Ohio, Florida, Texas, Virginia, Georgia, South Carolina, and Tennessee.

- It would allow the Secretary of Revenue to issue a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration. The temporary license would expire upon the expiration of the disaster declaration. The person would continue to be responsible for filing returns and paying the required motor fuel taxes, but the person would not have to post a bond or obtain a certificate of authority to operate in this State from the Secretary of State to receive the temporary license. The Secretary of Revenue would not be allowed to renew or issue a temporary license to a person that failed to file the required returns or make payments of the required taxes. (**Section 6.10**)

The tax and regulatory relief provided by **Sections 6.1 through 6.9** of this Part is limited in several ways:

- It only applies to nonresident businesses and nonresident employees who come into the State at the request of a critical infrastructure company.
- It only applies to disaster-related work performed during a disaster response period.
- It only applies if the nonresident business or nonresident employee has no other income attributable to this State. Ie, it only applies in situations where, but for this work, the business or employee would not be subject to NC income and franchise taxes.

Section 6.1 defines a "*critical infrastructure company*" as a corporation doing business in this State prior to the disaster declaration that meets one or more of the following:

- Provides broadband, mobile telecommunications, telecommunications, or wireless Internet access.
- Is subject to control of the NC Utilities Commission, the NC Rural Electrification Authority, the Federal Communications Commission, or the Federal Energy Regulatory Commission.

It defines a "*nonresident business*" as an entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period. The term "nonresident business" includes a corporation, an affiliate or subsidiary of a critical infrastructure company, a pass-through entity, as well as a sole proprietorship.

It defines "*critical infrastructure*." Examples of critical infrastructure include communications networks; electric generation, transmission, and distribution systems; natural gas transmission and distribution systems; water pipelines; and related support facilities. The definition of "*disaster-related work*" as repairing, renovating, installing, building, or performing services on critical infrastructure.

It defines a "*disaster response period*" as the beginning 10 days prior to the first day of a disaster declaration and extending until the earlier of the following:

- 60 days following the expiration of the disaster declaration, as provided under G.S. 166A-19.21(c).
- 180 days following the issuance of the disaster declaration. This period of time coincides with the general law.

Sections 6.2 through 6.4 provide relief from the following regulatory laws:

- Section 6.2 provides a nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company does not have

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to obtain a certificate of authority from the Secretary of State's office to do business in this State. Under general law, a foreign corporation that performs work in this State must obtain a certificate of authority from the Secretary of State. The application fee for a certificate of authority is \$250. Failure to obtain a certificate of authority would prevent a foreign corporation from maintaining an action or proceeding in any court in this State. The relief is granted to both corporations and LLCs.

- Section 6.3 provides service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered employment for purposes of the State unemployment insurance laws.
- Section 6.4 provides that the workers compensation laws do not apply to a nonresident employee performing disaster-related work for a nonresident business in this State during a disaster response period at the request of a critical infrastructure company.

Sections 6.5 through 6.9 provide relief from the following tax laws:

- Section 6.5 provides that a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's franchise tax.
- Section 6.6 provides a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's corporate income tax. It does require that payments made to an affiliate or subsidiary that is not subject to tax for this reason must be added back to determine State taxable income, to the extent the payments are deducted for federal tax purposes.
- Section 6.7 provides that pass-through entities, such as a subchapter-S corporation or a partnership, do not have to file informational returns with the Department of Revenue if the entity is a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. However, the entity must provide information to their shareholders and partners so that they may properly file a NC return if they are otherwise required to do so.
- Section 6.8 provides a nonresident business or a nonresident employee who solely derives income from NC sources attributable to disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's individual income tax.
- Section 6.9 provides that a business does not have to withhold NC individual income taxes for wages paid to a nonresident employee or for compensation paid to an ITIN contractor who is a nonresident if the income is derived from disaster-related work performed during a disaster response period at the request of a critical infrastructure company.